78-1034

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Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO.

78-1034

MICHAEL R. EVANS

Petitioner

vs.

JOSEPH F. ANDREJKO, Defense Audit Service
STANLEY W. PALMQUIST, Chief Appeals Offier,
Philadelphia Field House, United States Civil
Service Commission; and
DEFENSE SUPPLY AGENCY, Administration
Support Center

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

pro se

MICHAEL R. EVANS, Petitioner
509 ORCHARD CIRCLE
WHITEHALL, PA 18052
PHONE 215-264-9232

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

NO.

MICHAEL R. EVANS,
Petitioner

vs.

JOSEPH F. ANDREJKO et al
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered October 5, 1978, which judgment affirmed the judgment and order of the United States District Court, for the Eastern District of Pennsylvania entered on October 4, 1977, denying Petitioner relief in violation of his Civil Right.

OPINIONS BELOW

Neither the order of the United States District Court, for the Eastern District of Pennsylvania nor the order of the United States Court of Appeals for the Third Circuit is reported. A copy of each order is set forth herein as Appendix A and B, respectively.

JURISDICTION

Petitioner filed a petition under the Federal Mandamus Statute to 28 U.S.C. 1361, 1291 and the Declaratory Judgment Act, 28 U.S.C. 2201-2202 in the United States District Court, for the Eastern District of Pennsylvania for summary judgment which was denied and judgment entry placed of record October 4, 1977. Appeal from the District Court's denial was taken to the Court of Appeals, Third Circuit, on October 5, 1978, the Court of Appeals affirmed the District Court's decision. The jurisdiction of the Court is invoked under 28 U.S.C. and Part V of the rules of the Court.

QUESTIONS PRESENTED

Petitioner was removed from his position for sustained inefficient performance and that the removal was warranted to promote the efficiency of the service.

(1) Whether Petitioner's due process rights as secured by the United States Constitution were violated and denial of a fair trial resulted where evidence of massive waste and inefficiency disclosed by a federal auditor who is then fired by the same people who are responsible for the correction of these conditions, but do in fact perpetuate this waste and inefficiency.

(2) Whether the Civil Service Commission did also violate the Petitioner's rights by not properly evaluating the facts which they are responsible for under their merit program.

(3) Whether the discharging action was necessary to promote the efficiency of the service.

(4) Whether witnesses not allowed to testify for the Petitioner, did in fact have overwhelming expertise in areas of waste and inefficiency not available to the Civil Service Commission. (CSC)

(5) Whether the General Accounting Office audit staff is more qualified than the CSC in evaluating waste and inefficiency and their reviews support the Petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the subjective evaluation of the Petitioner's work performance by a Civil Service Commission Appeals office who does not have sufficient expertise to render a proper evaluation. A review by the General Accounting Office will substantiate the Petitioner's above average performance.

(1) Lack of evidence of inefficiency USE Title 5 Section 7501
Charlton v US 412 F2d 390
A dismissal action unsupported by substantial, credible evidence must be regarded as arbitrary and therefore cannot stand.

(2) Intent to discriminate 545 F2d 222

(3) Bias in evaluation 29 Code of Federal Regulations (CFR) 1607.5 b(4)
Scott v US 160 ct. Cl. 192 1963
Dismissal of a government employee due to bias or prejudice or which constitutes excessive punishment is construed to be arbitrary and capricious.

(4) Discharge was discriminatory
Flowers v Crouch Walker Corp. 552 F2d 1277
The Petitioner's audit results appear to have threatened the agency and the people responsible for the waste and inefficiency.

(5) On-the-job discrimination and undue harassment
EFOC Decision NO 70-401 1970 CCH EEDC Decision 6100.2 BNA FEP Cas 427

(6) Is the appraisal system legal
3 Employee Relations L.J. 240 Lopatka A 1977
System rewards waste and inefficiency but hinders efficiency, therefore it is illegal in terms of evidence a reasonable mind might accept to support the CSC conclusion.
5 USCA 1006-1009

STATEMENT OF THE CASE

The Petitioner, an auditor for the Defense Supply Agency, was removed from his position 26 Sept 1975 on a charge of sustained inefficient performance. A concerted effort was employed to discredit the Petitioner by the "Administrative gang bang" procedure as cited by the HEW employee on the television show "60 Minutes" 15 Oct 1978. The coercive attack started in Dec 1972 and resulted in many adverse actions against the Petitioner without recouse to third party review by an agency with sufficient expertise to evaluate the charge with the related audit work performed by the Petitioner. The Petitioner has requested review of his work by The General Accounting Office (GAO) to determine where the waste and inefficiency is and who is in fact responsible without success. GAO reports confirm many of the Petitioner's findings although the Auditor General took little or no action on serious conditions of massive waste and inefficiency.

REASONS FOR GRANTING WRIT

Petitioner has presented five questions for review, each of which contains substantial issues concerning whether the lower Courts ruling comports with federal constitutional mandates as established by the decisions of this Court.

The Petitioner has reached the Final Guardian of the People after seeking justice in the lower Courts, the elected representatives, the Department of Defense, and the Civil Service Commission. The Petitioner has no doubt that any random selection of peers would render him fair justice, but this was unavailable. The decision in this case is for the 99% of the hardworking loyal employees of the federal government who do what they are told no matter how wasteful because they are fearful of the consequences of their employment. The current General Services Administration scandal is a perfect example of this. A federal auditor's job is to help the 99% of the loyal patriotic employees of the government, but as you can see the Petitioner, a federal auditor, is seeking redress of the highest Court in the land. The charge is inefficiency by bureaucrats who are in fact responsible for the waste of hundreds of millions of dollars that are documented by the Petitioner's audit workpapers in the former Defense Supply Agency. Repeated requests for the General Accounting Office to evaluate the Petitioner's assignments fell on deaf ears. A current example of government waste of overtime as cited on Appendix C is documented in the Petitioners audit papers in the Defense Supply Agency on 5 April 1974 showing a system that encourages waste. The people who fired the Petitioner did absolutely nothing to correct this unnecessary waste of overtime and noncompliance with regulations. The same people gave the Petitioner an evaluation of incompetence and had the arrogance to use it in the Petitioner's dismissal.

CONCLUSION

If the Petitioner is unable to find justice within this body it would appear that the federal employee at any level has no proper recourse within the law and is at the mercy of the handful of bureaucrats that control it. President Carter's new Merit Systems Protection Board will only be effective untill such time that it is infiltrated by the Civil Service Employees who have protected this waste and inefficiency before his reorganization.

Petitioner prays this COURT to issue a Writ of Certiorari to review the denial of his petition in the COURT OF APPEAL. If the COURT is unable to grant this then the Petitioner prays that the COURT remand the case back to President Carter's Merit System Protection Board.

Respectfully submitted,



MICHAEL R. EVANS
PETITIONER
509 ORCHARD CIRCLE
WHITEHALL, PA 18052
PHONE (215) 264-9232

APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

OCT 4 1977

JOHN J. HARDING Clerk
By _____ Dep. Clerk

MICHAEL R. EVANS	:	
	:	CIVIL ACTION
vs.	:	
	:	NO. 77-621
JOSEPH F. ANDREJKO, Dir. of Intell. and Communications, Directorate, Defense Audit Service, et al.	:	

O R D E R

Plaintiff, Michael R. Evans, was employed by the Defense Supply Agency (DSA) as an auditor. He was terminated from that position on September 26, 1975 for inefficient performance of his work. On appeal by the plaintiff, the Federal Employees' Appeals Authority affirmed the action of the DSA. Plaintiff now seeks reinstatement and backpay. Plaintiff has also filed an amended complaint seeking a within-grade salary increase which had been denied him by the DSA. Both parties have filed cross-motions for summary judgment.

On appeal from an agency decision upholding termination of an employee, the district court's review is limited to assuring that the agency decision was supported by substantial evidence and was made in accordance with proper procedures. See, e.g., Barnes v. Chatterton, 515 F.2d 916, 921 (3d Cir. 1975). Our review of the record convinces us that there is substantial evidence to support the action of the agency.

With respect to plaintiff's appeal from the denial of his within-grade step increase, we need not reach the issue of whether this decision is reviewable in the district court, since a review of the record shows that this agency decision was neither arbitrary or capricious.

ENTERED: 10/5/77

CLERK OF COURT

Therefore, upon consideration of the parties' cross-motions for summary judgment, the agency record, and memoranda submitted, IT IS ORDERED that the defendant's motion for summary judgment is GRANTED and plaintiff's motion for summary judgment is DENIED.

David N. Angell
J.

Dated: October 4, 1977.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 78-1033

MICHAEL R. EVANS,
Appellant

v.

JOSEPH F. ANDREJKO, Director of Intelligence and Communications Directorate, Defense Audit Service; STANLEY W. PALMQUIST, Chief Appeals Officer, Philadelphia Field House, United States Civil Commission; and DEFENSE SUPPLY AGENCY, Administration Support Center

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D. C. Civil No. 77-621

Submitted Under Third Circuit Rule 12(6) September 29, 1978

Before ROSENN and WEIS, Circuit Judges,
and FISHER, District Judge *

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT:

Certified as a true copy and issued in lieu of a formal mandate on October 27, 1978.

Test: _____

Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

_____
Circuit Judge

Attest: _____

COPY

_____
Thomas F. Quinn, Clerk

Dated: October 5, 1978

* Clarkson S. Fisher, United States District Judge for the District of New Jersey, sitting by designation.

APPENDIX C

Defense Dept.: No data on overtime

The Washington Post

WASHINGTON — Officials of the Defense Department, which is spending about $400 million on overtime pay this year, told a congressional subcommittee yesterday that they cannot say how many of their employes are collecting such pay or what kind of work is being performed to earn it.

Carl W. Clewlow, a Defense Department personnel official, told the hearing on federal overtime pay practices that managers at the Defense Department, the government's largest employer, "never saw the need" to compile as much detailed information on overtime payments as congressional investigators had requested.

Because of the Defense Department's sheer size and its efforts to decentralize decision-making authority, such information is collected only at far-flung installations around the world and sent only in general form to top managers in Washington, Clewlow said.

Rep. Gladys Noon Spellman, D-Md., who chairs the subcommittee on compensation and employe benefits, expressed amazement at Defense Department claims that such information would have to be gathered manually, and that the job would take three months and cost $100,000.

She noted that other large and less technology-oriented agencies had managed to supply such information.

In a sometimes sharp exchange, Spellman told Defense Department officials she was puzzled about how they arrived at a budget request figure when they seemed to lack a rationale for it. She also waved a stack of reports on internal audits conducted by the Defense Department and said the documents "do not bear out" officials' claims that they are doing all they can to improve their accounting systems and managerial controls of payments.

The Defense Department has 137 different accounting systems, 15 of which relate to civilian payrolls, according to testimony. Of the 15, only 10 have been approved by the General Accounting Office as required under a 1950 law.

Defense Department officials noted that four of the unapproved systems were added recently and that the fifth is awaiting GAO approval.

The Defense Department could save millions of dollars, especially in foreign military sales, if it upgraded its accounting systems to meet GAO recommendations, GAO investigators said.

Yesterday's hearing was the subcommittee's second on federal overtime pay policies. Congressional investigators have charged the government's overtime pay systems have become so poorly managed and confused that they encourage waste, abuse and fraud.

Oil firms accused of $2 billion frauds

The New York Times 11 Dec 78

WASHINGTON — A congressional staff memorandum released yesterday asserts that leading oil companies have bilked American consumers of nearly $2 billion in overcharges during the last four years, and it says that some officials in the Department of Energy condoned the overcharges.

The staff, in a report to Rep. John D. Dingell, D-Mich., and chairman of the Subcommittee on Energy and Power, said a senior attorney in the Department of Energy "has described these frauds as possibly the largest criminal conspiracy in U.S. history."

"At the peak of this criminal activity," the staff report says, "American consumers were overcharged nearly $2 million per day. These schemes have continued for over four years, resulting in consumer overcharges of nearly $2 billion."

Basically, the alleged fraud revolves around oil companies' falsely certifying that oil from older wells, the price of which is held low by government controls, is oil from newer wells, which is permitted a higher price.

The staff report asserts that the overcharges were $6 to $8 a barrel, which contains 42 gallons and can be refined about half into gasoline and half into other products. There is no physical difference between "old" and "new" crude oil.

"These buyers, some of whom participated in the frauds, then passed on the overcharge to American consumers," the report says. "More than $1 million could be made on a single transaction. Kickbacks, bribes, and payoffs were used . . . to facilitate the conspiracy."

The report further asserts that Department of Energy officials "allowed these schemes to continue and proliferate, creating a government-condoned new class of white collar criminals."

The staff report says that "there is evidence in DOE internal files that indicates officials had been aware of this criminal activity as early as 1975."

Dingell has sent copies of the staff memorandum to Secretary of Energy James R. Schlesinger and to Atty. Gen. Griffin B. Bell, with a request for preliminary replies by Dec. 20 and more complete reports by Jan. 15.

A spokesman for the Department of Energy said that his department had just received the letter and staff report and would have no immediate comment. A spokesman for the Department of Justice could not be reached.

Dingell also said in his letters that "the entire subject of the government's handling of these major criminal cases will be the subject of extensive subcommittee hearings early next year."

A grand jury has been hearing evidence on these allegations in Houston. According to investigators in Washington who are familiar with that inquiry, the main target is Uni Oil Inc., of Houston. Eight other concerns are also under investigation, including Carbonit Houston, a petroleum marketing company that allegedly bought low-priced crude oil from Mobil and then sold higher priced crude back to Mobil. A spokesman for Mobil did not return a telephone call to the company headquarters in New York.

This is what happens when auditors are intimidated and coerced by the same people that condone this fraud, although they are actually responsible for the correction of these conditions.